REMARKS

Applicants thank the Examiner Maria Marvich and her supervisor for the courtesies they extended to their attorney in the interview held on March 13, 2003. During the interview the Examiner stated that adding the limitations of claim 4 into claim 1 would make the claim indefinite. The Examiner recommended limiting claim 1 to a promoter that directs expression of ACC.

The title of this application has been amended in accordance with the Examiner's suggestion to remove the term "novel." In addition, a substitute specification has been included with this amendment to make reference to sequences with respect to their SEQ ID NO: identifiers instead of their <400> numeric identifiers and to remove an embedded hyperlink.

Substitute drawings accompany this amendment. The substitute drawings are clearer versions of the original drawings except that Figures 1 and 4 have been amended to make reference to the SEQ ID numbers associated with them. Accordingly, the objections to the specification and drawings should be withdrawn.

The Examiner has objected to claims 5, 11-14 and 18-21 because multiple dependent claims 5, 18 and 19 depend from one or more other multiple dependent claims. Claims 5 and 19 have been amended so that they no longer depend from other multiple dependent claims. Claim 18 has been cancelled.

The Examiner has objected to claims 4, 6, 7, 8, 9, 10 and 17 because these claims are listed with reference to identifying <400> numeric indicators instead of their SEQ ID NO: identifiers. Claims 4, 6, 8 and 17 have been cancelled. Claims 7, 9 and 10 have been amended to refer to the appropriate SEQ ID NO: identifiers.

Claim 1 stands rejected under 35 USC 102(b) as being anticipated by Resnick. Claim 1 has been amended to specify that the promoter, in its native form, directs expression of a gene encoding ACC synthase, as specified in claim 3. Resnick does not

disclose a promoter that directs expression of a gene encoding ACC synthase. Accordingly, this rejection of claim 1 should be withdrawn.

Claims 1, 2 and 15 stand rejected under 35 USC 102(b) as being anticipated by Blume. As described above, claim 1 has been amended to specify that the promoter, in its native form, directs expression of a gene encoding ACC synthase, as previously specified in claim 3. In addition, claim 15 has been amended to claim a promoter at least one portion of which is derived from a promoter as set forth in SEQ ID NO:3. Blume does not describe the promoter set forth in SEQ ID NO:3, or a promoter that directs expression of a gene encoding ACC sythase. Claim 2 has been cancelled. Accordingly, the rejection of claims 1 and 15 as anticipated by Blume should be withdrawn.

Claims 1-3 stand rejected under 35 USC 102(b) as being anticipated by Goodman. Claim 1 has been amended to claim a promoter "wherein, in its native form, the promoter directs expression of a gene encoding 1-aminocyclopropane-1-carboxylic acid (ACC) synthase and wherein the promoter is inducible in response to physical stimulation." Goodman only describes an ethylene inducible promoter, not a promoter that is inducible in response to physical stimulation as claimed. Accordingly, Goodman does not describe the invention of claim 1. Claims 2 and 3 have been cancelled. Accordingly, this rejection should be withdrawn.

Claims 4, 6, 10 and 17 stand rejected under 35 USC 112, second paragraph, as being indefinite for containing the term "substantially." The term "susbtantially has been removed from all of these claims. Accordingly, this rejection should be withdrawn.

Claims 4, 6, 7 and 10 stand rejected under 35 USC, second paragraph, as being indefinite for reciting the terms "low stringency conditions" and "hyrbridizes to," because, according to the Examiner, these terms make the metes and bounds of the claims ambigous. The claims have been amended to specify that the hybridization conditions include washing in 6 X SSC, 0.1% w/v SDS at 42°C, as specified in the specification, for example, on page 13, lines 25-31. Accordingly, this rejection should be withdrawn.

Claims 2 and 15 stand rejected under 35 USC, second paragraph, as being indefinite for reciting the term "a gene associated with." Claim 2 has been cancelled and this term has been removed from claim 15. Accordingly, this rejection is now moot.

Claims 1-4, 6-8, 10 and 15-17 stand rejected under 35 USC 112, first paragraph, because the Examiner finds claims to "derivatives or homologues" and claims to nucleotide sequences having "at least 50% similarity" not adequately described in the specification. The claims have been amended to remove claims to "derivatives or homologues" and claims to nucleotide sequences having "at least 50% similarity." Accordingly, this rejection should be withdrawn.

For the foregoing reasons a notice of allowance is solicited.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "**Version with markings to show changes made**".

In the event that the transmittal letter is separated from this document and the Patent and Trademark Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 22975.2001300

Respectfully submitted,

Dated: April 4, 2003

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE SPECIFICATION

Please replace the original specification with the enclosed substitute specification.

A marked-up copy of the original specification showing changes is also enclosed.

In the Claims:

Amend claims 1, 5, 7, 9, 10, 11, 12, 13, 14, 15, 19, 20 and 21 to read as follows:

1. An isolated nucleic acid molecule comprising a sequence of nucleotides or complementary sequence of nucleotides defining a promoter ~~or a derivative or homologue thereof,~~ wherein, in its native form, the promoter directs expression of a gene encoding 1-aminocyclopropane-1-carboxylic acid (ACC) synthase and wherein the promoter is inducible in response to physical stimulation.

5. ~~An~~ The isolated nucleic acid molecule according to any one of claims 1 and 22 to 24 ~~to 4~~ comprising a nucleotide sequence ~~substantially~~ as set forth in SEQ ID NO:2 ~~<400>3 or a nucleotide sequence having at least 25% similarity thereto~~ or a nucleotide sequence capable of hybridizing to SEQ ID NO:3 ~~hybridising to <400>3~~ under ~~low~~ stringency conditions of hybridization and washing in 6 X SSC, 0.1% w/v SDS at 42°C.

7. ~~A~~ An isolated promoter ~~nucleic acid molecule defining a promoter or a homologue or derivative thereof said nucleic acid molecule~~ obtainable by the method of isolating genomic DNA from plant cells, rendering the genomic DNA or portion thereof single stranded and then identifying a region on the genomic DNA

which hybridizes to a primer corresponding to all or part of SEQ ID NO:1 ~~<400>1~~ or a complementary form thereof and ~~the~~ cloning DNA upstream of the region of primer hybridization.

9. ~~An~~ The isolated promoter of claim 7 obtainable by the method of:

(i) amplifying a region of single stranded plant genomic DNA with the primers ~~<400> 4~~ SEQ ID NO:4 and ~~<400>5~~ SEQ ID NO:5;

(ii) optionally amplifying the amplified DNA of (i) above with primers selected from ~~<400> 6~~ SEQ ID NO:6 and ~~<400>7~~ SEQ ID NO:7 or ~~<400> 8~~ SEQ ID NO:8 and ~~<400>9~~ SEQ ID NO:9;

(iii) running amplified DNA on a gel and excising the product of amplification; and

(iv) subcloning product and identifying the promoter.

10. The isolated promoter of ~~A nucleic acid according to~~ claim 7 or ~~8~~ 9 ~~or a promoter according to claim 9~~ comprising a nucleotide sequence substantially as set forth in ~~<400>3~~ SEQ ID NO:3 or a nucleotide sequence having at least ~~25%~~ 70% identity ~~similarity~~ thereto or a nucleotide sequence capable of ~~hybridising~~ hybridizing to SEQ ID NO:3 under ~~low~~ stringency conditions of hybridization and washing in 6 X SSC, 0.1% w/v SDS at 42°C.

11. A genetic construct comprising ~~a nucleic acid molecule defining a~~ the promoter ~~according to any one~~ of claims 1, 5, 7, 9, 10 and 22 to 25 ~~to 10~~.

12. The ~~A~~ genetic construct ~~according to~~ of claim 11 further comprising a structural or regulatory gene operably linked to said promoter.

13. A method of altering a characteristic of a plant said method comprising introducing ~~a~~ the genetic construct ~~according to~~ of claim 12 into a cell or group of cells of a plant and wherein said structural or regulatory gene facilitates the altering of said plant characteristic, regenerating a plant or plantlet from said cell or group of cells carrying said ~~genetic construct~~ introduced structural or regulatory gene and growing or subjecting said plant or plantlet to conditions sufficient to induce the promoter ~~in said genetic construct~~ operably linked to said structural or regulatory gene.

14. The ~~A~~ method ~~according to~~ of claim 13 wherein the altered plant characteristic comprises resistance to a plant pathogen, altered nutritional characteristics, expression of a plantabody, an altered biochemical pathway, altered fertility and/or altered flower color ~~colour.~~

15. A modular promoter, said modular promoter comprising at least one portion which is derived from a promoter ~~which, in its native form, directs expression of a gene associated with ethylene biosynthesis and is inducible by physical stimulation.~~ as set forth in SEQ ID NO:3 ~~or a nucleotide sequence having at least 70% similarity thereto~~ or a nucleotide sequence capable of hybridizing to SEQ ID:3 under stringency conditions of hybridization and washing in 6 X SSC, 0.1% w/v SDS at 42°C.

19. A transgenic plant comprising a nucleic acid molecule according to any one of claims 1 ~~to 9~~ and 22 to 24.

20. A vegetative or reproductive portion of ~~a~~ the transgenic plant ~~according to~~ of claim 19.

21. A cut or severed flower from a the transgenic plant ~~according to~~ of claim 19.